

NOT FOR PUBLICATION**SEP 14 2006**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DANIEL AMAYA-RODRIGUEZ,

Defendant - Appellant.

No. 05-50637

D.C. No. CR-04-01277-JTM

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Jeffrey T. Miller, District Judge, Presiding

Submitted September 11, 2006**

Before: PREGERSON, T.G. NELSON, and GRABER, Circuit Judges.

Daniel Amaya-Rodriguez appeals from his conviction and 48-month sentence imposed following a guilty plea to being an illegal alien found in the United States after having been deported, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We decline to review Amaya-Rodriguez's ineffective assistance of counsel claim because such claims are generally inappropriate on direct appeal. *See United States v. McKenna*, 327 F.3d 830, 845 (9th Cir. 2003) (stating that ineffective assistance of counsel is more properly raised on collateral attack under 28 U.S.C. § 2255, unless the record is sufficiently developed or there is an obvious denial of adequate representation).

Amaya-Rodriguez's contention regarding *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), is foreclosed. *See United States v. Weiland*, 420 F.3d 1062, 1079 n.16 (9th Cir. 2005); *see also United States v. Beng-Salazar*, 452 F.3d 1088, 1091 (9th Cir. 2006) (rejecting after *Shepard v. United States*, 544 U.S. 13 (2004), the specific contention that a section 1326(b) enhancement cannot be applied where the defendant did not admit the prior conviction during a guilty plea).

Counsel's motion to withdraw is granted.

AFFIRMED.